

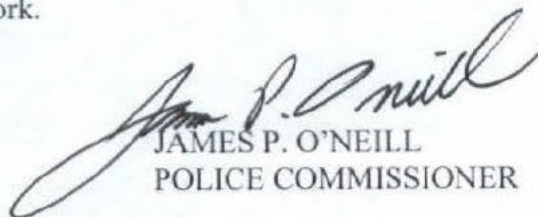


POLICE DEPARTMENT

In the Matter of the Disciplinary Proceedings	:	
- against -	:	FINAL
Detective Tyrone Norris	:	ORDER
Tax Registry No. 914474	:	OF
Real Time Crime Center	:	DISMISSAL

Detective Tyrone Norris, Tax Registry No. 914474, Shield No. 05306, Social Security No. ending in [REDACTED], having been served with written notice, has been tried on written Charges and Specifications numbered 2018-18513, as set forth on form P.D. 468-121, dated February 5, 2018, and after a review of the entire record, Respondent is found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Detective Tyrone Norris from the Police Service of the City of New York.


JAMES P. O'NEILL
POLICE COMMISSIONER

EFFECTIVE: February 28, 2018



POLICE DEPARTMENT

February 26, 2018

-----X
In the Matter of the Charges and Specifications

Case No. 2018-18513

- against -

Detective Tyrone Norris

Tax Registry No. 914474

Real Time Crime Center
-----X

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable David S. Weisel
Assistant Deputy Commissioner Trials

APPEARANCE:

For the Department: Daniel Maurer, Esq.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For the Respondent: No appearance, tried in absentia

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

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Website: <http://nyc.gov/nypd>

Charges and Specifications:

1. Probationary Detective Tyrone Norris, while assigned to Real Time Crime Center, on or about and between May 25, 2017 and January 25, 2018, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Detective Norris wrongfully ingested Amphetamines, to wit: Methamphetamine, without police or medical necessity.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Probationary Detective Tyrone Norris, while assigned to Real Time Crime Center, on or about and between May 25, 2017 and January 25, 2018, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Detective Norris wrongfully possessed Amphetamines, to wit: Methamphetamine, without police or medical necessity.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department was tried in absentia by the Court on February 14 and 15, 2018. Marissa Gillespie, Esq., of Karasyk & Moschella LLP, appeared initially for Respondent. Respondent did not appear. Counsel stated that Respondent would not be appearing for trial, and she left the trial room with the Court's permission.

Proper proof of personal service of the charges and the notice of hearing were before the Court (see Charges and Specifications, acknowledgement of service, signed by Respt. on Feb. 9, 2018, at 0853 hrs.; Dept. Ex. 1, affidavit of Lt. Peter Muratori describing notification of trial dates). Such established the jurisdictional prerequisites for finding Respondent in default.

The Court deemed Respondent to have entered a plea of Not Guilty to the subject charges. The Department called Police Officer Edmund Morrissey, Deputy Chief Surgeon Dr. Joseph Ciuffo, and Dr. Thomas Cairns as witnesses. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, the Court finds Respondent Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

Introduction

On January 25, 2018, Respondent was randomly screened for drugs by the Department. Police Officer Edmund Morrissey of the Medical Division collected three hair samples from Respondent's leg, two of which were sent to Psychomedics Corporation for testing. Respondent's third hair sample was stored at the Medical Division so that, in the event Respondent's first two hair samples tested positive, he could send the third sample to a laboratory of his choosing for independent testing. Approximately one to two weeks later, Psychomedics notified the Department that Respondent's first two hair samples tested positive for methamphetamine.

On February 2, 2018, Respondent was interviewed by Police Surgeon Dr. Joseph Ciuffo, the Department's Medical Review Officer, regarding the positive results. During the interview, Respondent stated [REDACTED], but did not provide any possible reasons for why he tested positive for methamphetamine. Ciuffo determined that no supplements could have caused Respondent to test positive for either amphetamine or methamphetamine.

At issue in this case is whether or not the scientific evidence proved, by a preponderance of the evidence, that Respondent wrongfully possessed and ingested methamphetamine.

The Hair Collection Process

Respondent's testing samples were collected on January 25, 2018, at the Medical Division's Drug Screening Unit by **POLICE OFFICER EDMUND MORRISSEY**, who had received training in the collection of hair samples. Morrissey confirmed Respondent's identity through his Department ID card. Respondent completed the Medical Division's drug screening questionnaires, on which he was required to list any medications taken within the past three months. [REDACTED] He was

assigned a unique drug screen number (Tr. 10-17, 26; Dept. Exs. 3a-b, Medical Division questionnaires).

Morrissey indicated that he adhered to standard procedures when he collected Respondent's hair samples. He sprayed the table in the exam room with alcohol and wiped it down before covering it with exam table paper. At less than half an inch long, the hair on Respondent's head was too short to use, so Morrissey used Respondent's leg. Respondent lifted his leg onto the table and Morrissey wiped it down with alcohol. With gloved hands Morrissey shaved Respondent's leg with a new razor and divided the hair into three piles. He then distributed the hair samples into three separate foil envelopes, which were then sealed and initialed by both Morrissey and Respondent (Tr. 17-26, 29-31; Exs. 4a-b, sample acquisition cards; Exs. 5a-d, custody and control forms).

Two of the samples along with the corresponding custody and control forms were sent to Psychomedics for testing. Respondent's third sample remained secured in a safe at the Medical Division (Tr. 26, 28).

Medical Review Officer Interview

Dr. Joseph Ciuffo was the Department's Medical Review Officer. He was deemed an expert witness in this regard and with regard to the general practice of medicine. In his role as MRO, Ciuffo reviewed and investigated non-negative drug test results reported to the Department to determine whether there was a legitimate medical explanation (Tr. 32-34, 36-37, 41-42; Ex. 7, Ciuffo curriculum vitae).

Ciuffo interviewed Respondent on February 2, 2018. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In cases of positive tests for anabolic steroids, Ciuffo had requested that members bring in supplements because some

supplements allegedly contained prohormones or other substances that were intended to evade legal restrictions on steroids. That was not a factor here, and Ciuffo knew of no supplements that would contain amphetamines (Tr. 37-41, 43-44; Ex.8, MRO packet).

Ciuffo maintained that Respondent did not mention any substances that contained amphetamines, or offer a reasonable explanation of why he tested positive for methamphetamine. There are certain medications, like diet pills and attention deficit hyperactivity disorder medicine, that can result in positive amphetamine tests. These, however, are all controlled substances requiring a prescription, and Respondent denied any prescription medication use [REDACTED] (Tr. 41-42).

Ciuffo agreed that one type of methamphetamine can be contained in certain nasal decongestant sprays, but Respondent mentioned nothing about this (Tr. 45-46).

Psychemedics Results

DR. THOMAS CAIRNS was the senior scientific advisor at Psychemedics responsible for reviewing all data packages produced by the laboratory. Psychemedics was licensed by the New York State Department of Health in forensic toxicology to conduct hair testing for drugs of abuse. Psychemedics was licensed in multiple other states to perform the same function, as well as by the College of American Pathologists. Cairns was deemed an expert in the field of forensic toxicology and workplace testing (Tr. 47-49, 53-54; Ex. 9, Psychemedics certificates of accreditation; Ex. 10, Cairns curriculum vitae).

Cairns explained that methamphetamine is a specific type of the amphetamine class of drug, essentially amphetamine with an added methyl group (one carbon and three hydrogen atoms). When any drug is ingested into the body, it is absorbed into the bloodstream. As drug-contaminated blood passes through the liver, it is metabolized. As methamphetamine and its metabolite, which itself is amphetamine, are carried by the bloodstream, they get trapped in each

hair follicle. Hair samples collected from the leg provide a look-back period of drug use of approximately six to seven months (Tr. 50-51, 62-63, 72, 78).

Cairns testified that the first step taken by Psychemedics was to examine the seals on the sample envelopes to ensure they were intact and the documentation was in order. The next step was to conduct the enzyme immunoassay screening test. If this screening analysis indicates the presence of methamphetamine at or above the administrative cutoff of 5 nanograms per 10 milligrams of hair, the sample is considered a presumptive positive. The established cutoff was supported by clinical analysis and cleared by the Food and Drug Administration. This presumptive positive meant that there was a high probability the drug was present in the hair (Tr. 54-55, 58-60, 65, 71, 118).

The next step in the process was to take another portion of hair and "extensively" or "aggressively" wash it for several hours to ensure against external contamination. The fifth wash is analyzed and multiplied by 3.5 as an additional criterion, to mimic five more hours of washing. Cairns testified that the wash procedures employed by Psychemedics had been validated by the Federal Bureau of Investigation, the Department of Justice, and researchers at North Carolina's Research Triangle (Tr. 55, 63-66, 68, 100-02, 109-10, 116-17).

The wash used by Psychemedics on amphetamine presumptive positives was distinct from its usual isopropanol and water-based phosphate buffer wash. For amphetamines, the lab used a wash containing 90% ethanol and 10% alcohol. The ethanol accomplished the same solvent effect as the isopropanol to invade the hair structure and draw out any contaminants. The different procedure arose because Psychemedics found that the standard wash was not working for amphetamines, as the molecular structure was different than cocaine and other drug groups. There were certain "anomalies" in which the amount of drug in the wash was spiking rather than steadily decreasing as expected. This meant that the wash was not removing enough drug from

the hair; too much remained in the hair and the wash kept finding it. In the early 1990s, the lab had used an ethanol wash but abandoned it because of the cost. They re-examined this and found that ethanol "optimized" the removal of methamphetamine (Tr. 65-69, 107-11).

Cairns conceded that the term "inaccessible to contamination" as it pertains to hair was "an expression of a model" but "doesn't point to the reality." Physically, Cairns compared the structure of a strand of hair to a transatlantic cable. The hair was made up of several macrofibril strands. Each macrofibril contained 10 to 12 microfibrils. Each microfibril was a single strand of keratin protein. While there was evidence that drugs could externally contaminate between the macrofibrils, external contamination could not penetrate the sheath protecting the keratin within the microfibrils. This could be demonstrated by dye studies using an electron microscope. The dye did not penetrate the microfibrils (Tr. 103-05).

Cairns explained that the aqueous portion of the wash expanded the hair so that there was space between the macrofibrils, as well as washing the epidermis, or outer coating of the entire hair. But beyond the sheath of the macrofibril, there was no penetration (Tr. 106-07).

After washing, the hair was dissolved and analyzed using liquid chromatography-mass spectrometry/mass spectrometry (LC-MS/MS). If mass spectrometry reveals the presence of methamphetamine at or above the cutoff, Psychemedics tests the second hair sample for confirmation. Additionally, the presence of the amphetamine metabolite must be at least 0.02 of the methamphetamine concentration. Low levels of amphetamine would indicate that only amphetamine, and not methamphetamine, was being used. If the certifying scientist verifies that "all the controls are within the tolerances," the sample is reported to the Department as positive (Tr. 55-57, 60-61, 64, 78, 80-81, 118).

At trial, Cairns reviewed the laboratory data package produced by Psychemedics for Respondent's samples. The package showed that Respondent's first hair sample tested positive

for methamphetamine at a level of 10.6 ng/10 mg. His second sample tested positive for methamphetamine at 13.1 ng/10 mg. Cairns attributed the difference between the two samples to the variation in the length of hairs collected and sampled. Respondent's first sample contained hairs of up to 2.1 cm, while his second sample contained hairs of up to 2.2 cm. Because leg hair samples were different lengths representing different look-back periods, the deviation in sample lengths here was both expected and normal. Additionally, the amphetamine percentage in the first sample was 0.30 and 0.38 in the second sample. Finally, the amount of drug in the last wash was multiplied by 3.5 and subtracted from the amounts of methamphetamine found by mass spectrometry, and the difference still was above the cutoff. In fact, the levels of drug in the last wash was zero for both samples. Based on the levels at which Respondent's samples tested positive, double the 5 ng/10 mg cutoff, Cairns testified that the results represented recreational use, using it on occasional weekends for several months. It could not be attributed to passive ingestion or secondhand smoke (Tr. 56, 61, 66, 69-71, 79, 81-82, 116-18; Ex. 11, Psychomedics data package).

Cairns noted that amphetamines are stimulants, originally used medically as diet drugs but lately used as drugs of abuse. Amphetamines still are prescribed today for attention deficit hyperactivity disorder, in medications such as Adderall. Methamphetamine could be prescribed if amphetamines were not effective (Tr. 72-73, 89).

Cairns testified that there are two isomers of methamphetamine, known as *d*- and *l*-. The *d*- and *l*- isomers are mirror images of each other. *d*- and *l*- refer to dextrorotatory and levorotatory. This slight difference in how the isomers rotate light has immense forensic significance. While *l*-methamphetamine can be found in over-the-counter decongestants, *d*-methamphetamine is psychoactive and often is used illicitly. The isomers cannot convert to each other (Tr. 73-74).

Cairns explained that the initial screening immunoassay test used an antibody to detect amphetamine. This antibody was highly sensitive to methamphetamine, but relatively insensitive to *l*-methamphetamine. An excess amount of *l*-methamphetamine could have the ability to trigger a positive result at the immunoassay stage. For example, if the immunoassay came back with a result of 6 ng, just above the cutoff, but mass spectrometry came back with a level of 175 ng, the "inequivalence" between the results had to be attributed to *l*-methamphetamine. In Respondent's case, the immunoassay quantitatively was 18 to 20 ng. The mass spectrometry results were approximately 10 and 13 ng. This forensic equivalence or "harmony" between the results meant that the methamphetamine in Respondent's samples was nearly 100% *d*-methamphetamine, with little to no *l*-methamphetamine (Tr. 74-76, 87, 112-13).

According to Cairns, the results indicated that the methamphetamine in Respondent's samples was either pharmaceutical grade or from a highly purified clandestine source (Tr. 76-77, 87-89).

Cairns testified that over-the-counter exercise supplements, often implicated in positive anabolic steroid tests, had no relation to amphetamine (Tr. 83-84).

Analysis

First, the Department established that Respondent's hair samples were collected, packaged, sealed and transported properly to Psychemedics for testing. There is nothing in the record about the collection processes at the Medical Division or the testing process at the lab indicating that any sort of error was made. The mere possibility that something could have gone wrong is speculative. Cf. Case No. 81240/05, p. 67 (Apr. 24, 2006) ("It is abundantly clear" that officer's "head hair was carefully cut, packaged and sealed, by the Department, under a clean environment"), confirmed sub nom. Matter of Friscia v. Kelly, 51 A.D.3d 451 (1st Dept. 2008); Case No. 70714/96 et al., p. 42 (Jan. 16, 1997) ("[T]he Department amply proved that the

samples were carefully obtained using a licensed laboratory's procedures"), confirmed sub nom. Matter of Brinson v. Safir, 255 A.D.2d 247 (1st Dept. 1998).

Furthermore, there was no testimony to counter Cairns's testimony that the chain of custody arrived at Psychemedics intact, and thus contained Respondent's samples. See Matter of Fischer v. Town of Patterson, 149 A.D.3d 1071, 1072 (2d Dept. 2017) (record contained evidence demonstrating identity of urine sample and its contents based on documented chain of custody); *Case No. 83905/08*, p. 18 (Feb. 4, 2009).

Cairns credibly and thoroughly testified concerning the procedures followed by Psychemedics. The Court finds that his testimony adequately explained how Psychemedics distinguishes passive contamination from intentional ingestion, and how the lab determines whether a hair sample contains drugs. Cairns's testimony established that Respondent possessed and ingested methamphetamine on multiple occasions on or about and between the dates listed in the specifications. See Matter of Lumezi v. Bratton, 147 A.D.3d 566 (1st Dept. 2017) (determination that officer ingested cocaine was supported by substantial evidence, including that hair was subjected to repeated testing by independent laboratories and yielded positive results for presence of cocaine).

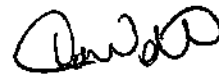
In sum, the hearing before this tribunal was a de novo hearing on the merits of whether Respondent possessed and ingested methamphetamine. The Court has found no irregularities that would impact on its findings. As such, Respondent is found Guilty.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on August 30, 1993. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has a strong interest in not employing individuals who ingest and possess illegal drugs such as methamphetamine. Therefore, the Court recommends that Respondent be terminated from employment with the Department. See Case No. 2016-15832 (Feb. 16, 2018) (12-year member with no prior disciplinary history dismissed from Department for possessing and ingesting methamphetamine); Case No. 86365/10 (Jan. 17, 2012) (over 19-year member, no history, same result for cocaine), confirmed sub nom. Matter of Jones v. Kelly, 111 A.D.3d 415 (1st Dept. 2013) (penalty not shocking to Appellate Division's sense of fairness, as Police Commissioner is responsible to the public for the Department's integrity).

Respectfully submitted,



David S. Weisel

Assistant Deputy Commissioner Trials

APPROVED

FEB 27 2018



JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE TYRONE NORRIS
TAX REGISTRY NO. 914474
DISCIPLINARY CASE NO. 2018-18513

Respondent was appointed to the Department on August 30, 1993. On his last three performance evaluations, he once received an overall rating of 3.5 "Highly Competent/Competent" and twice received an overall rating of 4.5 "Extremely Competent/Highly Competent." He has been awarded two medals for Excellent Police Duty. [REDACTED]

Respondent has a prior disciplinary history. In 2004, he forfeited 30 vacation days and was placed on one year dismissal probation after pleading guilty to twice failing to conduct a proper investigation as directed by a competent authority.

From October 18, 2005, to October 17, 2006, Respondent was placed on Level 1 Force Monitoring. Respondent has been suspended from duty since February 7, 2018, in connection with the instant proceeding.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner Trials